the third party had not at any time disclosed the name of the principals, if any, and had not disclaimed liability when notice of the claim for indemnity was served on them; and lastly, it was contended that even if the third party were not the underwriters, they were nevertheless liable because they had an interest in the contract.

These allegations and contentions were refuted by an affidavit dated the 21st of March to which is attached photostatic copies of correspondence which had passed between the defendant and the third party from which it appears that the defendant knew that the third party were not the underwriters.

The cover note of the insurance policy in the possession of the defendant contains the following information, namely:—

(1) That defendant was insured with underwriters at Lloyd's, London;

(2) That the policy of insurance was effected for the third party as brokers;

(3) That the name of the underwriters would be supplied on application;

(4) That the underwriters would, in relation to claims arising under the insurance submit to the jurisdiction of the courts of the States of Malaysia; and

(5) That the service of legal process and other notices in respect of such claims shall be served upon M/S. Donaldson & Burkinshaw, 1st Floor, Mercantile Bank Building, Singapore, or Hongkong Bank Building, Kuala Lumpur.

The point taken before me by counsel for the defendant was that the third party as insurance brokers were the agents of the underwriters and were therefore liable under the contract of indemnity.

It was contended that by virtue of section 183 of the Contract (Malay States) Ordinance 1950, where a principal is resident abroad or when the agent had not disclosed the name of the principal or when the principal, though disclosed, cannot be sued, then in the absence of any contract to the contrary, a presumption arises, that the terms of the contract of employment between the principal and agent included a stipulation to the effect that the agent was personally bound by the terms of any contract he had entered into on behalf of his principal and could be sued for breach thereof.

Counsel further referred to article 127 of *Boustead* on Agency (12th Edition) for the proposition that an insurance broker may sue in his own name to enforce contracts of indemnity on behalf of his client. It was argued that if an insurance broker had the right to sue in order to enforce a contract of indemnity then he must be deemed liable to be sued for breach of the terms of the contract. I must reject this argument. If the principle is correctly understood then an insurance broker who is entitled to sue the underwriters is liable to be sued not by the assured but by the underwriters.

I have considered the relevant authorities cited under the aforesaid article 127, namely, *Provincial Insurance Co.* v. *Leduc* [1]; *Kensington* v. *Inglis* [2]; and *Lloyds* v. *Harper.*[3] The principle established by these authorities is that an insurance broker can sue the underwriters on behalf of his client to enforce the contract of indemnity. The question of whether an insurance broker could be sued to enforce the contract was neither considered nor discussed.

In *Provincial Insurance Co. Ltd.* v. *Crowder,*[4] the question of whether a custom, alleged to be observed at Lloyd's, London, whereby an insurance broker is regarded as having assumed the underwriters' liability under a policy of insurance effected through him was considered; and it was held that no such custom existed.

I think that the application to serve the third party notice in this case was made through a misconception of the law and of the functions of insurance brokers. The business of insurance brokers is to act as intermediaries between the insurance companies and the prospective policy holders. In effecting these contracts, the insurance brokers constitute themselves as agents of the policy holders and in that capacity may sue the underwriters on behalf of their clients to enforce a contract of indemnity; but that right to sue does not render them liable to be sued for indemnity under the contract with the underwriters. Since neither in law nor in contract is the third party in the present case liable in damages to the defendant under the insurance policy, the application to serve the third party notice on them was misconceived.

The third party is therefore entitled to an order in terms of the prayers in the summons-in-chambers (enclosure 14) dated the 4th of March 1966.

Order accordingly.

Solicitors: *F. C. Arulanandom; Allen & Gledhill.*

YONG NAM v. HOUSING & DEVELPOMENT BOARD

[A.C.J. (Tan Ah Tah F.J.) June 10, 1966]

[Singapore — District Court Appeal No. 1 of 1966]

Housing and Development Board Ordinance, 1959, ss. 12 and 24A — Power of board — Whether mandatory for board to make standing orders — Meaning of "may" and "it shall be lawful".

In this appeal it was contended that the proceedings were a nullity as the summons was signed by the legal officer of the Housing and Development Board who had no authority or power to sign the summons. It was contended that as section 24A of the Housing and Development Board Ordinance, 1959, gave power to the board to make standing orders with the approval of the Minister, it was obligatory on the board to make such standing orders and as the board had failed to do so it could not authorize the legal officer to sign the summons.

Held: there were no circumstances which created a duty or required or compelled the board to make standing orders and the board was entitled to pass the resolution authorizing the legal officer to sign the summons.

DISTRICT COURT APPEAL.

C. F. J. Ess for the appellant/defendant.

Harry L. Wee for the respondent/plaintiff.

Cur. Adv. Vult.

Tan Ah Tah F.J.: In this case a summons was issued by the Housing and Development Board against the defendant. The summons was signed by Mr. Chee Tiang Chin who was an officer employed by the board. When the matter came before the learned district judge, it was submitted by counsel for the defendant that the proceedings were a nullity because Mr. Chee Tiang Chin had no authority or power to sign the summons. The learned district judge did not uphold this submission and gave judgment for the plaintiff according to the prayer in the claim.

The defendant appeals to this court on the ground that section 24A of the Housing and Development Board Ordinance, 1959, as amended by the Housing and Development Board (Amendment) Ordinance, 1964, made it obligatory on the board to make standing orders.

Section 24A reads as follows:—

"The board may, with the approval of the Minister, make standing orders providing for any matter in regard to which standing orders may be made under this Ordinance and in particular for the following:—

(a) the method of entering into contracts by or on behalf of the board;

(b) the delegation of powers to officers of the board;

(c) the opening, keeping, closing and internal audit of accounts of the board;

(d) the conduct and discipline of officers of the board;

(e) loans and allowances or gratuities to officers of the board;

(f) housing accommodation for officers of the board; and

(g) the professional and technical training of officers of the board."

It is said by counsel for the defendant that the words "with the approval of the Minister" made it obligatory on the board to make standing orders, and that since the board failed to do so, the board had no right to delegate the power to sign summones to Mr. Chee Tiang Chin and that therefore Mr. Chee Tiang Chin had no right or authority to sign the summons in this case.

With regard to the meaning of words such as "may" and "it shall be lawful" the position is perhaps best summarised as follows in *Maxwell* on the Interpretation of Statutes 11th edition at page 237:—

"According to Lord Cairns, such words as 'it shall be lawful' are always simply permissive or enabling. They confer a power, and do not, of themselves, do more. But there may be something in the nature of the thing empowered to be done, something in the object for which it is to be done, something in the conditions under which it is to be done, something in the title of the persons for whose benefit the power is to be exercised, which may couple the power with a duty, and make it the duty of the person in whom the power is reposed to exercise it when called upon to do so. It lies on those who contend that an obligation exists to exercise the power to show in the circumstances of the case something which, according to the above principles, creates that obligation, and the cases decide only that where a power is deposited with a public officer for the purpose of being used for the benefit of persons who are specifically pointed out, and with regard to whom a definition is supplied by the legislature of the conditions upon which they are entitled to call for its exercise, that power ought to be exercised, and the court will require it to be exercised. Lord Penzance said that the words 'it shall be lawful' are distinctly words of permission only, and the true question is, not whether they mean something different, but whether, having regard to all the circumstances — to the person enabled, to the general object of the statute, and to the persons for whose benefit the power may have been intended to be conferred — they do or do not create a duty in the person on whom it is conferred to exercise it. It is not enough that the thing empowered to be done should be for the public benefit in order to make it imperative to exercise that power on all occasions falling within the statute. It may be assumed that all powers conferred by statute on individuals in general public Acts are for the public benefit, or they would not have been conferred. He could find no specific authority for the proposition that in a certain class of statutes such words as 'it shall be lawful' import *prima facie*, not permission, but obligation. The effect of the cases in which the exercise of the power conferred was held to be obligatory was that, though the statutes concerned had in terms only conferred a power, the circumstances were such as to create a duty and to show that the exercise of any discretion by the person empowered could not have been intended. Lord Selborne's view was that words such as 'it shall be lawful' are not ambiguous and susceptible either of a discretionary or obligatory sense, but their meaning is the same, whether there is or is not a duty or obligation to use the power which they confer. They are potential, and never (in themselves) significant of any obligation. The question whether a judge or public officer to whom a power is given by such words is bound to use it upon any particular occasion, or in any particular manner, must be solved *aliunde*, and in general it is to be solved from the context, from the particular provisions, or from the general scope and objects, of the enactment conferring the power. Lord Blackburn's opinion was that the enabling words gave a power which *prima facie* might be exercised or not, but if the object for which the power is conferred is for the purpose of enforcing a right, whether public or private, there may be a duty cast upon the donee of the power to exercise it for the benefit of those who have that right, when required on their behalf. Where there is such a duty, it is not inaccurate to say that the words conferring the power are equivalent to saying that the donee must exercise it. But he could not agree with the view that, whenever the statute is for the public good, and of general interest and concern, powers conferred by enabling words are *prima facie* to be considered powers which must be exercised."

The question therefore is whether there are any circumstances in the present case which require or which compel the board to make standing orders. Having considered the facts of the case and the arguments of counsel for the defendant, I can find no circumstances which create a duty in the board to make standing orders. No doubt if the board does make standing orders, these must be approved by the Minister, but in my opinion, there is nothing in this case which compels the board to make standing orders.

In the absence of standing orders, other sections in the Ordinance enable the board to function. One of them is section 12, which reads as follows:—

"Subject as hereinafter provided, it shall be the function and duty of the board —

(a) to prepare and execute the proposals, plans and projects for —

(i) the erection, conversion, improvement and extension of any building for sale, lease, rental or other purpose;

(ii) the clearance and redevelopment of slum and urban areas;

(iii) the development or redevelopment of areas designated by the Minister;

(iv) the development of rural or argricultural areas for the resettlement of persons displaced by operations of the board or other resettlement projects approved by the Minister;

(b) to manage all lands, houses and buildings or other property vested in or belonging to the board;

(c) to carry out all investigations and the surveys necessary for the performance of the functions and duties of the board;

(d) to provide loans with the approval of the Minister, to enable persons to purchase any developed land or part thereof upon a mortgage of such developed land or part thereof upon a mortgage of such developed land or part thereof at such interest as may be prescribed;

(e) to do all such other matters and things as are necessary for the exercise or performance of all or any of the functions and duties of the board."

It is to be observed that in section 12 the Minister's decision or approval is only required in three instances. The first appears in section 12(a)(iii) — the development or redevelopment of areas designated by the Minister. The second is to be found in section 12(a)(iv) — the development of rural or agricultural areas for the resettlement of persons displaced by operations of the board or other resettlement projects approved by the Minister and the third appears in section 12(d) — the board can provide loans with the approval of the Minister.

It is clear that the board can perform many of its duties and functions without seeking the approval of the Minister. There are many spheres in which the board can act without the approval of the Minister. In the present case the board had the right to pass a resolution that Mr. Chee Tiang Chin should be authorised to sign the summons to be issued in the civil district court. It is not disputed that such a resolution was passed on the 13th July 1962.

In my judgment the proceedings in the civil district court were not a nullity because they were properly commenced by summons signed by Mr. Chee Tiang Chin with the authority of the board. The authority of the board was lawfully exercised because there were no standing orders, and it had acted under section 12(e) of the Housing and Development Board Ordinance, 1959.

The appeal is therefore dismissed with costs and the deposit of $150 will be paid out to the respondent or its solicitors.

Appeal dismissed.

Solicitors: *R. C. H. Lim & Co.; C. J. Koh & Co.*

RE LIM YEW TEOK, DECD.; BRITISH AND MALAYAN TRUSTEES LTD. v. CHNG KIAT LENG & ORS.

[O.C.J. (Ambrose J.) June 11, 1966]

[Singapore — Originating Summons No. 112 of 1965]

Wills — Construction — Direction to pay income to residuary legatees and on death of residuary legatee to next of kin of such legatee and on death of such next of kin to the next of kin of such next of kin — Whether words can be supplied to effectuate intention of testator — Statutes of Distributions.

The testator directed by his will that the balance of income of his residuary estate be divided and paid to twelve named residuary legatees as stated by him. He also directed that on the death of a residuary legatee his or her shares of income should be paid to his or her next of kin in accordance with the Statutes of Distribution. He further directed that on the death of such next of kin his or her shares of income should be paid to the next of kin of such next of kin in accordance with the Statutes of Distribution. He went on to provide that only in the event of the complete failure of the stirps of any one or more of his residuary legatees should the shares of such original residuary legatee or legatees fall into residue.

Held: upon the true construction of the will on the death of the next of kin of the next of kin of a residuary legatee who has enjoyed shares of income under the will, the shares of income enjoyed by him pass to such of his next of kin as belong to the stirps of the original residuary legatee.

Cases referred to:—

(1) *British Malaya Trustee and Executor Co. Ltd.* v. *Chan Mek Tuan* [1937] M.L.J. 233.

(2) *British Malaya Trustee and Executor Co. Ltd.* v. *Chng Phee Lam* [1948] M.L.J. 188.

(3) *Re Whitrick, Sutcliffe* v. *Sutcliffe* [1957] 2 All E.R. 467.

ORIGINATING SUMMONS.

M. Karthigesu for the plaintiffs.

C. L. Duff for the first and second defendants.

Chua Sian Chin for the third, fourth, fifth and sixth defendants.